

ASSEMBLY BILL

No. 1547

Introduced by Assembly Member Eng

January 25, 2012

An act to amend Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to amend Section 1161b of the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1547, as introduced, Eng. Residential mortgage loans: foreclosure procedures.

(1) Existing law, until January 1, 2013, requires a 30-day notice, as specified, to be given to the borrower of certain home mortgages, as specified, before a mortgagee, trustee, beneficiary, or authorized agent may file a notice of default. Existing law requires the notice of default to include certain information, as specified. Existing law also requires contact with the borrower, as defined, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Existing law authorizes a borrower to designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. Under existing law, it is a crime to tear down the notice of sale posted on a property within 72 hours of posting.

Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property acquired through foreclosure. Existing law also authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a

violation, after notice and an opportunity to correct the violation is given.

This bill would delete the repeal clause for these provisions and thus extend the operation of these provisions indefinitely. Because this bill would change the definition of a crime, it would impose a state-mandated local program.

(2) Existing law, until January 1, 2013, requires a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure to be given 60 days' written notice to quit the property before being removed.

This bill would delete the repeal clause for this provision and thus extend the operation of this provision indefinitely.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:

3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not file a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph
6 (2) or 30 days after satisfying the due diligence requirements as
7 described in subdivision (g).

8 (2) A mortgagee, beneficiary, or authorized agent shall contact
9 the borrower in person or by telephone in order to assess the
10 borrower's financial situation and explore options for the borrower
11 to avoid foreclosure. During the initial contact, the mortgagee,
12 beneficiary, or authorized agent shall advise the borrower that he
13 or she has the right to request a subsequent meeting and, if
14 requested, the mortgagee, beneficiary, or authorized agent shall
15 schedule the meeting to occur within 14 days. The assessment of
16 the borrower's financial situation and discussion of options may
17 occur during the first contact, or at the subsequent meeting
18 scheduled for that purpose. In either case, the borrower shall be

1 provided the toll-free telephone number made available by the
2 United States Department of Housing and Urban Development
3 (HUD) to find a HUD-certified housing counseling agency. Any
4 meeting may occur telephonically.

5 (b) A notice of default filed pursuant to Section 2924 shall
6 include a declaration that the mortgagee, beneficiary, or authorized
7 agent has contacted the borrower, has tried with due diligence to
8 contact the borrower as required by this section, or that no contact
9 was required pursuant to subdivision (h).

10 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
11 already filed the notice of default prior to the enactment of this
12 section and did not subsequently file a notice of rescission, then
13 the mortgagee, trustee, beneficiary, or authorized agent shall, as
14 part of the notice of sale filed pursuant to Section 2924f, include
15 a declaration that either:

16 (1) States that the borrower was contacted to assess the
17 borrower's financial situation and to explore options for the
18 borrower to avoid foreclosure.

19 (2) Lists the efforts made, if any, to contact the borrower in the
20 event no contact was made.

21 (d) A mortgagee's, beneficiary's, or authorized agent's loss
22 mitigation personnel may participate by telephone during any
23 contact required by this section.

24 (e) For purposes of this section, a "borrower" shall include a
25 mortgagor or trustor.

26 (f) A borrower may designate, with consent given in writing, a
27 HUD-certified housing counseling agency, attorney, or other
28 advisor to discuss with the mortgagee, beneficiary, or authorized
29 agent, on the borrower's behalf, the borrowers financial situation
30 and options for the borrower to avoid foreclosure. That contact
31 made at the direction of the borrower shall satisfy the contact
32 requirements of paragraph (2) of subdivision (a). Any loan
33 modification or workout plan offered at the meeting by the
34 mortgagee, beneficiary, or authorized agent is subject to approval
35 by the borrower.

36 (g) A notice of default may be filed pursuant to Section 2924
37 when a mortgagee, beneficiary, or authorized agent has not
38 contacted a borrower as required by paragraph (2) of subdivision
39 (a) provided that the failure to contact the borrower occurred
40 despite the due diligence of the mortgagee, beneficiary, or

1 authorized agent. For purposes of this section, “due diligence”
2 shall require and mean all of the following:

3 (1) A mortgagee, beneficiary, or authorized agent shall first
4 attempt to contact a borrower by sending a first-class letter that
5 includes the toll-free telephone number made available by HUD
6 to find a HUD-certified housing counseling agency.

7 (2) (A) After the letter has been sent, the mortgagee,
8 beneficiary, or authorized agent shall attempt to contact the
9 borrower by telephone at least three times at different hours and
10 on different days. Telephone calls shall be made to the primary
11 telephone number on file.

12 (B) A mortgagee, beneficiary, or authorized agent may attempt
13 to contact a borrower using an automated system to dial borrowers,
14 provided that, if the telephone call is answered, the call is
15 connected to a live representative of the mortgagee, beneficiary,
16 or authorized agent.

17 (C) A mortgagee, beneficiary, or authorized agent satisfies the
18 telephone contact requirements of this paragraph if it determines,
19 after attempting contact pursuant to this paragraph, that the
20 borrower’s primary telephone number and secondary telephone
21 number or numbers on file, if any, have been disconnected.

22 (3) If the borrower does not respond within two weeks after the
23 telephone call requirements of paragraph (2) have been satisfied,
24 the mortgagee, beneficiary, or authorized agent shall then send a
25 certified letter, with return receipt requested.

26 (4) The mortgagee, beneficiary, or authorized agent shall provide
27 a means for the borrower to contact it in a timely manner, including
28 a toll-free telephone number that will provide access to a live
29 representative during business hours.

30 (5) The mortgagee, beneficiary, or authorized agent has posted
31 a prominent link on the homepage of its Internet Web site, if any,
32 to the following information:

33 (A) Options that may be available to borrowers who are unable
34 to afford their mortgage payments and who wish to avoid
35 foreclosure, and instructions to borrowers advising them on steps
36 to take to explore those options.

37 (B) A list of financial documents borrowers should collect and
38 be prepared to present to the mortgagee, beneficiary, or authorized
39 agent when discussing options for avoiding foreclosure.

1 (C) A toll-free telephone number for borrowers who wish to
2 discuss options for avoiding foreclosure with their mortgagee,
3 beneficiary, or authorized agent.

4 (D) The toll-free telephone number made available by HUD to
5 find a HUD-certified housing counseling agency.

6 (h) Subdivisions (a), (c), and (g) shall not apply if any of the
7 following occurs:

8 (1) The borrower has surrendered the property as evidenced by
9 either a letter confirming the surrender or delivery of the keys to
10 the property to the mortgagee, trustee, beneficiary, or authorized
11 agent.

12 (2) The borrower has contracted with an organization, person,
13 or entity whose primary business is advising people who have
14 decided to leave their homes on how to extend the foreclosure
15 process and avoid their contractual obligations to mortgagees or
16 beneficiaries.

17 (3) A case has been filed by the borrower under Chapter 7, 11,
18 12, or 13 of Title 11 of the United States Code and the bankruptcy
19 court has not entered an order closing or dismissing the bankruptcy
20 case, or granting relief from a stay of foreclosure.

21 (i) This section shall apply only to mortgages or deeds of trust
22 recorded from January 1, 2003, to December 31, 2007, inclusive,
23 that are secured by owner-occupied residential real property
24 containing no more than four dwelling units. For purposes of this
25 subdivision, "owner-occupied" means that the residence is the
26 principal residence of the borrower as indicated to the lender in
27 loan documents.

28 ~~(j) This section shall remain in effect only until January 1, 2013,~~
29 ~~and as of that date is repealed, unless a later enacted statute, that~~
30 ~~is enacted before January 1, 2013, deletes or extends that date.~~

31 SEC. 2. Section 2923.6 of the Civil Code is amended to read:

32 2923.6. (a) The Legislature finds and declares that any duty
33 servicers may have to maximize net present value under their
34 pooling and servicing agreements is owed to all parties in a loan
35 pool, or to all investors under a pooling and servicing agreement,
36 not to any particular party in the loan pool or investor under a
37 pooling and servicing agreement, and that a servicer acts in the
38 best interests of all parties to the loan pool or investors in the
39 pooling and servicing agreement if it agrees to or implements a

1 loan modification or workout plan for which both of the following
2 apply:

3 (1) The loan is in payment default, or payment default is
4 reasonably foreseeable.

5 (2) Anticipated recovery under the loan modification or workout
6 plan exceeds the anticipated recovery through foreclosure on a net
7 present value basis.

8 (b) It is the intent of the Legislature that the mortgagee,
9 beneficiary, or authorized agent offer the borrower a loan
10 modification or workout plan if such a modification or plan is
11 consistent with its contractual or other authority.

12 ~~(e) This section shall remain in effect only until January 1, 2013,~~
13 ~~and as of that date is repealed, unless a later enacted statute, that~~
14 ~~is enacted before January 1, 2013, deletes or extends that date.~~

15 SEC. 3. Section 2924.8 of the Civil Code is amended to read:

16 2924.8. (a) Upon posting a notice of sale pursuant to Section
17 2924f, a trustee or authorized agent shall also post the following
18 notice, in the manner required for posting the notice of sale on the
19 property to be sold, and a mortgagee, trustee, beneficiary, or
20 authorized agent, concurrently with the mailing of the notice of
21 sale pursuant to Section 2924b, shall send by first-class mail in an
22 envelope addressed to the “Resident of property subject to
23 foreclosure sale” the following notice in English and the languages
24 described in Section 1632: “Foreclosure process has begun on this
25 property, which may affect your right to continue to live in this
26 property. Twenty days or more after the date of this notice, this
27 property may be sold at foreclosure. If you are renting this property,
28 the new property owner may either give you a new lease or rental
29 agreement or provide you with a 60-day eviction notice. However,
30 other laws may prohibit an eviction in this circumstance or provide
31 you with a longer notice before eviction. You may wish to contact
32 a lawyer or your local legal aid or housing counseling agency to
33 discuss any rights you may have.”

34 (b) It shall be an infraction to tear down the notice described in
35 subdivision (a) within 72 hours of posting. Violators shall be
36 subject to a fine of one hundred dollars (\$100).

37 (c) A state government entity shall make available translations
38 of the notice described in subdivision (a) which may be used by a
39 mortgagee, trustee, beneficiary, or authorized agent to satisfy the
40 requirements of this section.

1 (d) This section shall only apply to loans secured by residential
2 real property, and if the billing address for the mortgage note is
3 different than the property address.

4 ~~(e) This section shall remain in effect only until January 1, 2013,~~
5 ~~and as of that date is repealed, unless a later enacted statute, that~~
6 ~~is enacted before January 1, 2013, deletes or extends that date.~~

7 SEC. 4. Section 2929.3 of the Civil Code is amended to read:

8 2929.3. (a) (1) A legal owner shall maintain vacant residential
9 property purchased by that owner at a foreclosure sale, or acquired
10 by that owner through foreclosure under a mortgage or deed of
11 trust. A governmental entity may impose a civil fine of up to one
12 thousand dollars (\$1,000) per day for a violation. If the
13 governmental entity chooses to impose a fine pursuant to this
14 section, it shall give notice of the alleged violation, including a
15 description of the conditions that gave rise to the allegation, and
16 notice of the entity's intent to assess a civil fine if action to correct
17 the violation is not commenced within a period of not less than 14
18 days and completed within a period of not less than 30 days. The
19 notice shall be mailed to the address provided in the deed or other
20 instrument as specified in subdivision (a) of Section 27321.5 of
21 the Government Code, or, if none, to the return address provided
22 on the deed or other instrument.

23 (2) The governmental entity shall provide a period of not less
24 than 30 days for the legal owner to remedy the violation prior to
25 imposing a civil fine and shall allow for a hearing and opportunity
26 to contest any fine imposed. In determining the amount of the fine,
27 the governmental entity shall take into consideration any timely
28 and good faith efforts by the legal owner to remedy the violation.
29 The maximum civil fine authorized by this section is one thousand
30 dollars (\$1,000) for each day that the owner fails to maintain the
31 property, commencing on the day following the expiration of the
32 period to remedy the violation established by the governmental
33 entity.

34 (3) Subject to the provisions of this section, a governmental
35 entity may establish different compliance periods for different
36 conditions on the same property in the notice of alleged violation
37 mailed to the legal owner.

38 (b) For purposes of this section, "failure to maintain" means
39 failure to care for the exterior of the property, including, but not
40 limited to, permitting excessive foliage growth that diminishes the

1 value of surrounding properties, failing to take action to prevent
2 trespassers or squatters from remaining on the property, or failing
3 to take action to prevent mosquito larvae from growing in standing
4 water or other conditions that create a public nuisance.

5 (c) Notwithstanding subdivisions (a) and (b), a governmental
6 entity may provide less than 30 days' notice to remedy a condition
7 before imposing a civil fine if the entity determines that a specific
8 condition of the property threatens public health or safety and
9 provided that notice of that determination and time for compliance
10 is given.

11 (d) Fines and penalties collected pursuant to this section shall
12 be directed to local nuisance abatement programs.

13 (e) A governmental entity may not impose fines on a legal owner
14 under both this section and a local ordinance.

15 (f) These provisions shall not preempt any local ordinance.

16 (g) This section shall only apply to residential real property.

17 (h) The rights and remedies provided in this section are
18 cumulative and in addition to any other rights and remedies
19 provided by law.

20 ~~(i) This section shall remain in effect only until January 1, 2013,~~
21 ~~and as of that date is repealed, unless a later enacted statute, that~~
22 ~~is enacted before January 1, 2013, deletes or extends that date.~~

23 SEC. 5. Section 1161b of the Code of Civil Procedure is
24 amended to read:

25 1161b. (a) Notwithstanding Section 1161a, a tenant or
26 subtenant in possession of a rental housing unit at the time the
27 property is sold in foreclosure shall be given 60 days' written
28 notice to quit pursuant to Section 1162 before the tenant or
29 subtenant may be removed from the property as prescribed in this
30 chapter.

31 (b) This section shall not apply if any party to the note remains
32 in the property as a tenant, subtenant, or occupant.

33 ~~(c) This section shall remain in effect only until January 1, 2013,~~
34 ~~and as of that date is repealed, unless a later enacted statute, that~~
35 ~~is enacted before January 1, 2013, deletes or extends that date.~~

36 SEC. 6. The provisions of this act are severable. If any
37 provision of this act or its application is held invalid, that invalidity
38 shall not affect other provisions or applications that can be given
39 effect without the invalid provision or application.

1 SEC. 7. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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